

34

Joint Legislative Budget Hearing

January 25, 2012

Workforce Issues

Remarks by:
Barbara Zaron, President
Joseph B. Sano, Executive Director



Thank you for the opportunity to speak to you about this year's proposed budget and the number one workforce issue - pay equity, and the lack thereof for the state's Management/Confidential (M/C) employees. I am Barbara Zaron, President and with me today is Joe Sano, Executive Director of OMCE, the Organization of NYS Management Confidential Employees, part of OPEIU Local 153, AFL-CIO. We are the labor organization that represents the interests of the state M/Cs.

In April 2009 and 2010, the Paterson Administration withheld the 3% and 4% respectively across-the-board raises for employees of New York State designated as management/confidential employees.

The original pay withholding actions were taken by the Paterson Administration; however, the Cuomo Administration has taken no action in either last year's enacted or this year's proposed budget to rectify this destruction of the compensation system for M/C employees. As a matter of fact, the problem has been exacerbated. This despite CSL §115 which espouses the policy of the state as equal pay for equal work. Pay fairness, pay equity and pay parity for M/Cs will continue to be OMCE's top priority in dealing with this Administration.

As you have heard the State workforce is shrinking and the ranks of M/Cs in the Executive Branch, Law and Comptrollers' offices now number less than 9000. M/Cs are mostly part of the classified civil service in the competitive and non-competitive class who serve each and every administration. A growing percentage of M/Cs are exempt political appointees.

Approximately 70% of those serving in positions designated M/C Grades 18 and below are women and other minority groups. You are probably more familiar with their titles - Keyboard Specialist, Secretary I and II, Budget Examiner, Payroll and Personnel Clerks, Senior Personnel Administrator - to name the most populated titles.

Many of those same titles are also designated into other bargaining units. While the duties and responsibilities for the positions are comparable, there exists a salary gap. An M/C Secretary II at Job Rate/Top of Scale for ten (10) years or more makes \$53,366 and the CSEA represented secretary makes \$55,455. The gap increases as one climbs the ladder of salary grades for the three major units of state employees. Over 60% of the treatment team leader positions at OMH/OPWDD are filled by women and other minorities. These first line managers, in addition to their significant client based responsibilities, also direct PEF represented team members who earn \$8400 to \$10,900 more than their team leader.

A "green ceiling" has been created. It stifles the recruitment, hiring and retention of women and minority candidates for state M/C jobs. This "green ceiling" is the artificial salary limitation placed on M/C positions by the Division of the Budget.

Women and minority candidates find that because of the artificial manipulation of the compensation system, a promotion to a managerial position often means a cut in pay.

It has become common practice that M/C supervisors are making less money than their subordinates. Not through the statutory process of grade assignment by Civil Service's Classification and Compensation Division but through the actions of Division of the Budget.

The proposed Executive Budget Article 7 bill calls for some sweeping statutory changes to Civil Service Law. While expressing the need for increased flexibility in hiring for promotional positions a cogent point is missed There is a 7% + gap in the wages paid to the M/C workforce when compared to their fellow workers in similar graded titles in other bargaining units. This disincentive was not caused by inflexible hiring rules or laws but rather it remains the product of meddling with the classification and compensation system.

Internal and external candidates will continue to reject M/C positions where they will ultimately be losing compensation and benefits to take the position. This fact can not be overlooked any longer. While expressing the need for increased diversity and recruitment for our workforce and our M/C ranks why would any minority or woman candidate leave a CSEA or PEF represented position and take an M/C position? They would not and they are not! Changing the merit system to achieve increased flexibility is not the balm that will soothe this injury. In fact, M/Cs have already retreated to previously held CSEA or PEF represented jobs or are in the process of doing so. We have lost and will continue to lose the gains made in recruiting women and minorities into leadership roles!

Let me summarize:

There is no monetary incentive for candidates to seek promotion, nor for incumbents to stay in an M/C position. Succession planning is a cruel hoax.

Civil Service Law §115 defines state policy as equal pay for equal work and carries a guarantee that pay injustice must be addressed. Chapter 10 of the Laws of 2008 put forth and signed into law provided the funding for comparable compensation for all M/Cs. That promise has been broken.

Chapter 491 of the Laws of 2011- the M/C Pay Bill for 2011-2015 institutionalizes a lower salary schedule for M/C employees than for CSEA and PEF represented employees continuing the disparate and discriminatory treatment of M/Cs.

The economics of our times have been used as an excuse to stifle the M/C compensation system. The Division of the Budget and the agencies possess many tools to manage the size and cost of the workforce. By April 2014, M/C employees will have five years of 0% across-the-board raises. Step increases (performance advances) are not automatically paid and are often withheld for the M/C workforce while others are automatically paid.

No one in state service will have given more. M/Cs have had the health insurance cost increases and participation in the deficit reduction leave program imposed on them, and are scheduled to receive salary increases in 2014 and 2015 similar to those guaranteed to CSEA and PEF. Regardless, M/C employees will still be an average of 7% behind their co-workers and perhaps even more if step raises or if statutorily provided increases are again withheld and the already withheld across the board increases are not restored.

OMCE remains committed to resolving the M/C pay equity issue. We grasp the economic condition of the state and nation. We also know that M/Cs have been forced to shoulder a higher degree of financial sacrifice than any other group of state employees!

Mayor Bloomberg and Massachusetts Governor Deval Patrick, in 2009 and 2011 respectively, lifted the "green ceiling" hanging over their M/C staffs. Equitable pay systems were restored and all could once again compete for advancement with the knowledge that a system of fair pay was restored. And we note that the Senate

Republican leadership recently approved across the board increases for its management/confidential employees.

There is no question that M/C employees are totally demoralized. The Governor speaks about opportunities and advancement in a reinvented state government. These opportunities do not exist in the real world of state employment. It is a cruel dilemma to ask dedicated exceptional candidates to take advancement in their field with the knowledge that the new position has been artificially and arbitrarily devalued. This is not a private sector model but it is the way we treat the M/Cs of NYS.

We can re-invent, re-imagine and shuffle the deck of state agencies all we want, yet all state employees understand that advancement or promotion to an M/C job comes with a price most cannot afford to pay.

OMCE will propose legislation to create an M/C Salary Commission (I've attached a draft) that will periodically meet to set the compensation and benefits for those designated M/C including agency commissioners. Such a commission, modeled after the successful Judicial Salary Commission, could re-establish a fair and just M/C compensation system, free of manipulation, mindful of the economy, responsive to the needs of all while restoring fairness, equity and resulting in renewed opportunities in a broken system. I ask you for your support for such a salary commission and assistance on behalf of your constituents in fixing the broken system!

On our initial global review of the budget, it appeared that some of the Governor's proposals re: agency mergers and consolidations were either positive or neutral as far as impact on the workforce and service provision. However, as more detailed review and analysis is taking place, it is clear that many of these proposals would have serious negative consequences on the workforce and on the provision of services as well as giving unfettered authority to the Executive.

Some examples are:

The bill would suspend the 12 month notice for OMH facility closures or ward closures/reductions and replace it with a 30-60 day notice. The bill also proposes closure of Kingsboro Psychiatric Center and gives the authority to the Commissioner of OMH to close or reduce services at other OMH psych centers.

These provisions would reverse the policy of giving affected communities time to plan for re-use of the closed facilities - how does this comport with economic development planning - and would use a time frame that would barely allow the layoff process to be properly implemented and would leave you, the legislators, out of the equation for what programs and services are offered in the communities you represent.

The proposals to consolidate functions such as procurement, real estate management, and IT at OGS make sense; these programs used to be core responsibilities of OGS years ago and the agency performed them well.

On the other hand, putting human resources and finance at the Office of General Services (OGS) makes no sense - the Governor proposes merging Civil Service and Office of Employee Relations which may make sense and designating it as the Department of Workforce Management, which is Human Resources. This is the agency that should have the human resources function under its jurisdiction and OGS has no particular expertise in Human Resources.

We don't have a specific recommendation re: the finance function but the finance system overhaul has been a joint effort of the Division of the Budget and Office of the State Comptroller.

Based on recent events, the business models being used as examples by the state are not necessarily ones that should be emulated.

The Quality Management movement, so popular years ago may be a better approach since it focused on employee participation in planning and designing changes.

We urge the legislature to reject any provisions that don't include legislative oversight of major governmental changes.

Our written testimony addresses a number of other issues presented in the Governor's proposed budget and provides questions that need to be answered so that specific detailed information is available before you act on this. We also hope to meet with you individually to discuss these issues.

Attachments:

- A) Effects of M/C Pay Withholding 2011-2012
- B) Proposed Draft Legislation - M/C Salary Commission
- C) "Who Is a Management/Confidential Employee"
- D) Civil Service Law Changes

Attachment A

Effects of M/C Pay Withholding on M/Cs vs CSEA and PEF represented employees in comparable grades
 Updated to reflect modifications resulting from Chapter 491 of the Laws of 2011 (Pay Bill)

The Organization of NYS Management/Confidential Employees, Inc. (OMCE)

(1) <u>Grade</u>	(2) <u>MC 2008-09 (JR)</u> Now MC 2011-12 (JR)		(3) <u>2010-11 (JR)</u> CSEA PEF		(Col 3-2) <u>Difference</u>
	6	33,215	34,317	34,317	
9	38,776	40,136	40,136	40,136	1,360
11	43,200	44,762	44,762	44,762	1,562
15	53,366	55,455	55,455	55,455	2,089
18	59,504	65,190	65,190	65,190	5,686*
19	62,597	68,637	68,637	68,637	6,040*
20	65,737	72,076	72,076	72,076	6,339*
21	69,132	75,862	75,862	75,862	6,730*
22	72,765	79,819	79,819	79,819	7,054*
23	77,454	83,954	83,954	83,954	6,500*
25/M1	84,581	92,974	92,974	92,974	8,393*
27/M2	93,803	100,822	100,822	100,822	7,019*
29/M3	104,080	111,064	111,064	111,064	6,984*
31/M4	114,961	122,354	122,354	122,354	7,393*
33/M5	127,794	134,868	134,868	134,868	7,074*
35/M6	140,864	148,421	148,421	148,421	7,557*
37/M7	152,886	163,033	163,033	163,033	10,147*

*PEF and CSEA represented employees in all grades and M/C employees in grades 6 through 17, who are at the job rate of their grade 5+ years, get a \$1,250 performance award (longevity payment), and those who are at the job rate of their grade 10+ years, get a \$2,500 performance award (longevity payment). This exacerbates the salary discrepancy with M/C employees in grades 18 and above, since the latter do not receive longevity payments. Furthermore, no administrative action has been taken in 2011-12 to pay employees in M/C grades 17 and below longevity payments, nor have any M/C employees yet received performance advances (steps) or merit payments in 2011-12, as authorized in the M/C pay bill.

STATE OF NEW YORK

2011-12 Legislative Session

IN SENATE

Introduced by read twice and ordered printed, and when printed to be committed to the Committee on

AN ACT in relation to establishing a special commission on compensation for state employees designated managerial or confidential, and providing for their powers and duties;

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. (a) On the first of April of every fourth year, commencing April 1, 2011, there shall be established for such year a commission on managerial or confidential state employee compensation to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for managerial or confidential state employees. In accordance with the provisions of this section, the commission shall:

(i) examine the prevailing adequacy of pay levels and non-salary benefits received by managerial or confidential employees of the state and determine whether any of such pay levels warrant adjustment; and

(ii) determine whether, for any of the four years commencing on the first of April of such years, following the year in which the commission is established, the annual salaries for the managerial or confidential employees of the state warrant adjustment.

In discharging its responsibilities under paragraphs (i) and (ii) of this subdivision, the commission shall take into account all appropriate factors including, but not limited to: the administrative withholding of management or confidential employee salary increases pursuant to chapter 10 of the laws of 2008; the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by unionized state employees; the maintenance of or attainment of proper salary differential between supervisors and their subordinates the levels of compensation and non-salary benefits received by professionals in government, and academia and private and nonprofit enterprise.

(b) The commission shall consist of 7 members to be appointed as follows: 3 shall be appointed by the governor; 1 shall be appointed by the temporary president of the senate; 1 shall be appointed by the speaker of the assembly; 1 shall be appointed by the comptroller; and 1 shall be appointed by the Organization of NYS Management Confidential Employees. The governor shall designate the chair of the commission from among the members so appointed. Vacancies in the commission shall be filled in the same manner as original appointments. To the extent practicable, members of the commission shall have experience in one or more of the following: determination of executive compensation, human resource administration and financial management.

(c) The commission may meet within, may hold public hearings and shall have all the powers of a legislative committee pursuant to the legislative law.

(d) The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

(e) No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

(f) To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

(g) The commission may request, and shall receive, reasonable assistance from state agency personnel as necessary for the performance of its functions.

(h) The commission shall make a report to the governor and the legislature of its findings, conclusions, determinations and recommendations, if any, not later than one hundred fifty days after its establishment. Each recommendation made to implement a determination pursuant to paragraph (ii) of subdivision (a) of this section shall have the force of law, and shall supersede inconsistent provisions of article 8 of the civil service law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies.

(i) Upon the making of its report as provided in subdivision (h) of this section, each commission established pursuant to this section shall be deemed dissolved.

§ 2. Date of entitlement to salary increase. Notwithstanding the provisions of this act or of any other law, each increase in salary or compensation of any officer or employee provided by this act shall be added to the salary or compensation of such officer or employee at the beginning of that payroll period the first day of which is nearest to the effective date of such increase as provided in this act, or at the beginning of the earlier of two payroll periods the first days of which are nearest but equally near to the effective date of such increase as provided in this act; provided, however, the payment of such salary increase pursuant to this section on a date prior thereto instead of on such effective date, shall not operate to confer any additional salary rights or benefits on such officer or employee.

§ 3. The annual salaries as prescribed pursuant to this act for state employees designated managerial or confidential whenever adjusted pursuant to the provisions of this act, shall be rounded up to the nearest multiple of one hundred dollars.

§ 4. This act shall take effect immediately.

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER:

SPONSOR:

TITLE OF BILL:

An act in relation to establishing a special commission on compensation, and providing for their powers and duties;

PURPOSE:

This bill would provide for a special commission on managerial or confidential employees of New York State to examine, evaluate and make recommendations with respect to compensation, adjustments and non-salary benefits of certain state employees.

SUMMARY OF PROVISIONS:

Section 1 of the bill would provide for the creation of the Commission on Managerial or Confidential employee compensation to consist of seven members appointed as follows: three by the Governor, one by the Speaker of the Assembly, one by the Temporary President of the Senate and two by the Organization of NYS Management Confidential Employees. The Commission would be required to report its findings, conclusions, determinations and recommendations within 150 days of its establishment.

Every four years the Commission would examine, evaluate and make recommendations with respect to managerial or confidential employee compensation. The Commission would determine what the salaries shall be and would make recommendations to effect the changes to salaries. Such recommendations would become effective the next fiscal year. The recommendations of the Commission would have the force of law.

Section 2 of the bill would establish the date the recommendations of the Commission become effective.

Section 3 of the bill would provide that any adjustment of salaries under this bill would be funded to the nearest hundred dollar.

Section 4 of the bill would provide for an immediate effective date.

EXISTING LAW:

Salaries increases for managerial or confidential employees of the state are contained in "pay bills" enacted by the Legislature. In 2009 and 2010 salary increases were administratively withheld.

Similar Legislation to the measure proposed here has been passed and/or enacted for the Judiciary and the State Legislature in 2008 and 2011.

STATEMENT IN SUPPORT:

Salary increases, pursuant to Chapter 10 of the Laws of 2008, for managerial or confidential employees of the state were administratively withheld in 2009 and 2010. As a result, managerial or confidential

employee salaries have become an increasing subject of controversy in recent years. Moreover, the absence of a pay increase has produced legal challenges and threatens the pay structure established in Article 8 of the civil service law. In fact, some managerial or confidential employees make less than those they supervise. Unlike the state's unionized workforce, managerial or confidential employees are prohibited from collectively bargaining increases in compensation.

This bill would address the issue, by establishing a quadrennial commission on managerial or confidential employee compensation to ensure that the proper salary level is set on a regular basis. More importantly, these proper salary levels will ensure the State's ability to continue to recruit and hire qualified managers.

BUDGET IMPLICATIONS:

The cost to the State from the operation of the Commission would be minimal. To the extent the Commission recommends a salary increase for employees, such increase would have a fiscal impact on the State.

EFFECTIVE DATE:

This bill would take effect immediately upon enactment.



NEWS
NETWORK

Facts for Filing

SEPTEMBER 2011

Who Is a Management/Confidential Employee?

Every position in New York State Government must carry a negotiating unit (N/U) designation created by operation of the New York State Fair Employment Act (Taylor Law). Most of these designations specify units that are represented in collective negotiations by specific employee organizations which have been certified by the Public Employment Relations Board. In addition, the managerial and confidential class (M/C) is created and defined in the Taylor Law which at the same time prohibits employees who managerial/confidential positions from participation in collective bargaining negotiations.

The appropriate designation (N/U) is affixed to each position when it is established by the Division of Classification and Compensation of the NYS Department of Civil Service and continues unchanged unless successfully challenged by one of the employee organizations representing employees of other designated groups. How that challenge is mounted and addressed is, of course, very important to OMCE members.

The Management/Confidential Class is composed, at this time of less than 10,000 positions in the Executive Branch and represents a large cross-section of managerial and confidential positions found in every New York State Department and Agency. Likewise, M/C positions are found in all jurisdictional job classifications including the competitive, non-competitive, exempt classes and even in the unclassified service. The three jurisdictional classes where most M/C positions are found are in the competitive (65%), the non-competitive (nearly 13%), and exempt (22%). At one time, over 90% of M/C positions were competitive. But the Civil Service Commission, over a period of years and through successive administrations, has made many traditionally competitive class career management positions non-competitive or exempt. OMCE has consistently fought to restore merit and fitness to the State's career management service. There are also M/Cs in the Office of Court Administration, the Legislature, Authorities, Commissions and Boards that are not included in these numbers.

Over 6,000 employees in M/C status hold positions in the competitive class. To be appointed to a competitive class position on a permanent basis, one must participate in a competitive examination, pass, and be reachable (under Civil Service Rule 4.2) for appointment from the resultant eligibility list. Competitive M/C positions cover a broad range of managerial and confidential jobs, from confidential secretarial jobs to managerial positions at the highest level of state government, including Division Directors and Deputy Commissioners of various agency program areas. Such positions cover a salary grade range from salary grade 11 to M-7.

Who is a Management/Confidential Employee?

Almost 1,500 persons hold M/C positions in the non-competitive jurisdictional class. To obtain permanency in the non-competitive class, one must pass an examination (but not in competition with other applicants). The examination usually involves the possession of specific education and experience qualifications. These positions, like those in the competitive class, cover a large range of managerial and confidential jobs from salary grade 11 to M-7.

About 2,500 persons hold M/C designated appointments in the exempt jurisdictional class. Exempt class employees are not required to take an examination and are generally appointed by agency heads. These jobs also cover a wide range, from confidential secretaries to Commissioner level positions in most agencies. Persons holding these positions, of course, serve at the pleasure of their appointing officer.

The Organization of NYS Management/Confidential Employees, Inc. (OMCE), is the labor organization created by, and for, M/C employees who are not permitted by the Taylor Law to be represented by an employee organization in collective negotiations. OMCE's primary purpose is to represent the collective point of view of M/C employees and to offer specific support and assistance designed to meet the employment related needs of individual M/C employees. To fulfill that role, OMCE works with the Executive and Legislative branches to promote M/C and broader governmental interests.

It's obvious from the above that M/C employees in general and OMCE members in particular, represent almost every aspect of state government program administration. They hold sensitive jobs at all levels in practically every state department and agency and possess extensive experience and expertise in all facets of New York State Government.

Attachment D

The Governor's proposal to "enhance and increase flexibility in the Civil Service Law raises numerous questions - on first review, it appears an attempt to cover in non-competitive class workforce - in favor of new hires - to the detriment of career competitive class employees.

Some specifics:

Part M, Article VII - adds a new §66 for Term Appointments in PS&T or other expert services which allows a 5 year appointment without examination to a PS&T or other position requiring special expertise or qualifications. The appointing authority is to certify that because of the type of services to be rendered or the temporary character of such services, it would not be practicable to hold an examination of any kind.

This appears to leave open the possibility that this section could apply to M/C positions - therefore, our concerns.

In addition, I can't think of any position for which there is not an examination of some kind that would be appropriate and practicable, whether it be an evaluation of training and experience, an oral exam or other screening methodology.

Section 51 of the Civil Service Law - Establishes an open promotion examination which could be used to fill PS&T or administrative positions which would cover many M/C positions. We have concerns about how this new exam and subsequent list would be used.

The language in paragraph four states that, "persons may only participate in either the promotion or open competitive examination."

Will this restrict those current employees to only taking a promotion exam, or will the employee have free choice to decide which exam to take, or do we have to wait for the regulations?

Section 52. Subsection 6 - Promotion and Transfer to Administrative Positions

This looks like another attempt to cover into competitive positions those who were never tested. It will dilute the value of a competitive class position and disadvantage employees in competitive class positions in the identified "administrative positions."

Section 60 of the Civil Service Law - Certification Lists from an Open Promotion Exam

We have been told that the use of this new proposed "new promotion" list would allow agencies to choose from either the open competitive or promotion list at the same time; allows an appointing authority to use either an open competitive or promotion exam to fill a vacancy. However, there are no standards or criteria so that the entire promotion list could be bypassed for no reason if the agency chooses only the open competitive list - to the severe detriment of employees already working for the state who have proven their worth.

Section 70, Subsection 1 - Provides that transfers from non competitive to competitive class positions shall be permitted only where non-competitive tests or qualifications include possession of credentials, licenses or certifications granted by appropriate regulatory bodies which are similar to the required essential tests or qualifications of the competitive class position.

Is this an attempt to cover in people who should have taken a competitive exam in the beginning? If at the time an agency wants to transfer a non-competitive class employee to a competitive class position, they decide that the non-competitive qualifications are equal to the competitive qualifications it would indicate there never should have been a non-competitive appointment - the employee should have been competitively tested in the first instance.

Section 70. subsection 3

This appears to be positive and would protect the rights of permanent employees who are transferred to a new department or agency. We do, however, have a concern that this could be abused in a variety of circumstances.